



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MND, MNR, MNSD, MNDC, FF*

### **Introduction.**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for unpaid utilities, for the cost of cleaning, repairs and painting, and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This application was initially heard on January 29, 2013 and adjourned to this date – February 27, 2013, in order to provide the parties with additional time to present evidence.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid utilities, for the cost of cleaning, repairs and painting, and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on in December 2004 and ended on December 31, 2011. The monthly rent at the end of the tenancy was \$3,000.00 payable in three installments and did not include utilities. The basement of the house contained two suites - a one bedroom suite and a two bedroom suite.

The tenancy agreement included an option to purchase the property at an agreed upon purchase price. When the option was exercised, the purchase price would be reduced by an amount equal to \$270.00 per month for every month, the tenant paid rent.

The landlord testified that sometime during October 2011, the tenant informed the landlord that he was not in a financial position to exercise the option to purchase and that he intended moving out at the end of December. The landlord stated that on December 31, 2012, his family and friends assisted the tenant with his move and the tenant left behind some items that were finally cleared out on January 10, 2012.

The landlord stated that he had professional cleaners clean the carpet on the day the tenant was moving out and is claiming the cost of doing so.

The landlord also testified that the tenant failed to pay rent for the last two months of tenancy. The tenant stated that he made payments in installments and over the term of the tenancy he ended up paying more rent than he should have. He filed a statement of dates and amounts paid towards rent from the start of tenancy. I informed the parties that I would review payments for the last two years of the tenancy to determine whether rent was owed.

The landlord stated that the statement was not accurate and that he had his own statement of accounts that he had not filed into evidence. The reason for not filing was that he received the tenant's evidence just a few days prior to the last hearing on January 29 and did not have time to respond. I reminded the landlord that he had adequate time to respond as the hearing was adjourned to February 27 thereby giving the parties more than one month to respond to any evidence filed by the other party.

The tenant stated that he had put in several improvements to the house because he originally intended to purchase the home, by exercising the option to purchase. Upon review of the photographs and receipts filed into evidence, I find that the tenant did a substantial amount of improvements to the property, some of which are acknowledged in email correspondence from the landlord. However, I informed the tenant that this hearing was convened solely for the purpose of hearing the landlord's application and that; he was at liberty to pursue any claims that he may have against the landlord by making his own application.

During the hearing certain items of the landlord's claim were discussed and dropped. For example, the tenant installed a water heater worth approximately \$1,000.00 at his own cost. This heater was left behind at the end of tenancy. The landlord included the cost of repair of this heater and repair of the furnace in his monetary claim. I find that the landlord benefitted from the installation and informed him that it was unreasonable to expect the tenant to cover the cost of repair of the heater, after the tenancy ended. In addition the repair of the furnace is the responsibility of the landlord unless he can prove that the tenant wilfully caused damage to the furnace.

For similar reasons the landlord dropped his claims for repair of a load bearing wall, repair of water leak and for the cost of a missing lawnmower. The landlord had also applied for the replacement of interior door handles.

The tenant reminded the landlord that he had at his own expense replaced all door handles in the upper level. The landlord agreed to drop his claim for the cost of replacing two door handles.

The landlord also claimed for a wireless doorbell. The tenant agreed that the door bell was in his possession and he will return it to the landlord.

The landlord is claiming the following:

1.	Unpaid rent for November and December	\$6,000.00
2.	Loss of income from basement suite for two months	\$2,000.00
3.	Utility bill	\$237.19
4.	Replace railing	\$1,050.00
5.	Carpet Cleaning	\$327.04
6.	Additional carpet stain removal	\$56.00
7.	Missing appliances - fridge and stove	\$461.68
8.	Missing stove	\$216.58
9.	Repair window	\$151.20
10.	Laundry cabinets	\$221.76
11.	Partition for flooring	\$38.64
12.	Paint Material, supplies and labor	\$2,157.13
13.	Insulation for torn down walls	\$117.56
14.	2 missing doors	\$201.57
15.	Laminate flooring	\$613.62
16.	Missing hood range	\$256.48
17.	Basement suite repair	\$1,024.80
18.	Filing fee	\$100.00
	<b>Total</b>	<b>\$15,231.25</b>

### **Analysis**

Based on the testimony and documents filed into evidence by both parties, I find that after the tenant moved out, the landlord renovated the basement and converted it into a single three bedroom suite. I will address each of the landlord's claims as follows:

1. Unpaid rent for November and December - \$6,000.00

The following is a copy of the statement of accounts of rent filed into evidence by the tenant

	<u>2010</u>	<u>2011</u>
January	\$2,950.00	\$3,000.00
February	\$3,175.00	\$4,000.00
March	\$1,725.00	\$3,000.00
April	\$3,450.00	\$3,500.00
May	\$4,450.00	\$3,000.00
June	\$2,450.00	\$1,500.00
July	\$4,950.00	\$3,000.00
August	\$1,950.00	\$4,500.00
September	\$4,450.00	\$1,500.00
October	\$3,450.00	\$1,500.00
November	\$3,450.00	\$0.00
December	\$2,225.00	\$0.00
<b>Total</b>	<b>\$38,675.00</b>	<b>\$28,500.00</b>

According to the above statement, the tenant paid rent in the amount of \$67,175.00. The rent owed for two years is \$72,000.00. Therefore the tenant owes rent in the amount of \$4,825.00.

2. Loss of income from basement suite for two months - \$2,000.00

The landlord filed a copy of the advertisement that he posted on line, seeking a tenant for the basement. The advertisement describes a three bedroom unit available on February 15 or March 1<sup>st</sup> and states "Renos almost completed".

Based on this advertisement the basement was unavailable for rent prior to February 15 due to the renovations and accordingly I find that the landlord did not suffer a loss of income that the tenant is responsible for. The landlord's claim for loss of income is dismissed.

3. Utility bill - \$237.19

The landlord filed a water bill that was paid on December 29, 2011. Since the tenancy ended on December 31, 2011, this bill is for water usage by the tenant. Therefore I find that the landlord is entitled to his claim of \$237.19.

4. Replace railing - \$1,050.00

The landlord filed a copy of a cheque written to a railing company in the amount of \$2,500.00 dated May 18, 2012. A hand written note states that the balance of \$3,000.00 will be paid upon completion. The note does not describe the work that was contracted.

The tenant stated that during the tenancy, he had constructed a viewing deck behind the house and five months after he moved out, the landlord decided to install a railing. The landlord agreed that he installed a specialty railing, but he stated that he was only claiming a portion of the value of the original railing that was removed to install the deck.

The work to install the railing started in May 2012 which is five months after the tenancy ended. The landlord did not file evidence to indicate exactly what work was undertaken and also did not file evidence show the date of completion and the final payment upon completion of the work. Therefore, I find that the landlord has not provided sufficient evidence to prove that the tenant is responsible for the installation of the railing.

In the absence of sufficient evidence I dismiss the landlord's claim for the cost to install the railing.

5. Carpet Cleaning \$327.04

6. Additional stain removal - \$56.00

The landlord testified that he hired a cleaning company to clean carpets on the same day that the tenant was moving out. I find that the landlord should have given the tenant the opportunity to clean the carpets after he had moved out. The landlord chose to clean the carpets himself and therefore must bear the cost of doing so.

7. Missing appliances fridge and stove - \$461.68

The landlord stated that the fridge and stove in one of the suites were missing. After the tenant moved out, the landlord moved the appliances from the upstairs to the basement. The landlord has filed a copy of the receipt for the original purchase of these appliances dated August 2005, but has not filed any evidence to indicate the value of the appliances that he states were missing.

The tenant stated that the appliances were old and not in good working order and therefore he placed them outside the home and then donated them to charity.

Based on the testimony of both parties, I find that the landlord replaced the missing appliances with appliances from the upper part of the house. The landlord did not file any evidence to indicate the value and age of the appliances that were missing.

However, the tenant admitted that he placed them outside and donated them to charity and therefore I find that the landlord suffered a loss.

I have now to determine the approximate value of the remainder of the useful life of the missing appliances. Without sufficient evidence, I am unable to do so.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Since the appliances were old, not in use and donated to charity, I find on a balance of probabilities that they were of minimal value. Accordingly, I award the landlord \$50.00 as a minimal award towards this loss.

8. Missing stove - \$216.58

The landlord has not replaced this stove and has not filed evidence to support the value of the stove that was missing. Therefore I find that the landlord has not established an entitlement for \$216.58 and accordingly his claim is dismissed.

9. Repair window - \$151.20

The tenant agreed that the window developed a crack during the tenancy and therefore I find that the tenant must bear the cost of repairing the window. The landlord filed an invoice dated March 22, 2012 in the amount of \$151.20. I award the landlord this amount.

10. Laundry cabinets - \$221.76

The tenant stated that he removed the cabinets and installed them in another area of the basement along with a laundry facility that did not exist prior to the tenancy. The landlord renovated the basement and probably installed new cabinets. Since the original laundry cabinets are still in the basement, I dismiss the landlord's claim.

11. Partition for flooring - \$38.64

The landlord stated that this partition was required for the flooring. Again, the landlord has renovated the basement and must bear the cost of doing so. His claim for \$38.64 is dismissed.

12. Paint material, supplies and labor - \$2,157.13

The tenancy started in 2004. The unit painted prior to the start of the tenancy. Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the paint.

As per this policy, the useful life of interior paint is four years. The landlord painted the unit in 2004 and therefore by the end of the tenancy, the painting had outlived its useful life. Accordingly, the landlord's claim for \$2,157.13 for painting is dismissed

13. Insulation for torn down walls - \$117.56

The landlord stated that the tenant tore down interior walls. The tenant agreed that he did but stated that the interior walls did not have insulation.

The tenant works in the construction industry and therefore I find on a balance of probabilities that he is knowledgeable about whether interior walls have insulation or not. The landlord did not file evidence to indicate that the original interior walls had insulation and therefore I dismiss his claim.

14. 2 missing doors - \$201.57

The tenant stated in his written submission that the doors were broken and the latches did not work. He agreed to pay \$45.00 towards the replacement of the doors.

As stated above Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the doors. As per this policy, the useful life of doors is 20 years. At the end of the tenancy the doors had approximately 12 years of useful life left. Accordingly, I find that the landlord is entitled to \$ 120.00 which is the approximate prorated value of the remainder of the useful life of the doors.

15. Laminate flooring - \$613.62

The landlord must bear the cost of renovating the basement – accordingly his claim is dismissed.

16. Missing hood range - \$256.48

The landlord has not filed a receipt for this expense and therefore it is dismissed.

17. Basement suite repair - \$1,024.80

As determined above, the landlord converted the basement into a single three bedroom suite, from the original plan of two suites. The landlord must bear the cost of doing so.

18. Filing fee - \$100.00

The landlord has established a claim of more than \$5,000.00 and is therefore entitled to the filing fee of \$400.00.

The landlord has established the following claim:

Unpaid rent for November and December	\$4,825.00
Utility bill	\$237.19
Missing appliances - fridge and stove	\$50.00
Repair window	\$151.20
2 missing doors	\$120.00
Filing fee	\$100.00
<b>Total</b>	<b>\$5,483.39</b>

I order that the landlord retain the security deposit of \$1,650.00 plus accrued interest of \$58.39 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$3,775.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$3,775.00**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 27, 2013

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Residential Tenancy Branch

